REV. LUIS AO-AS, REV. JOSE LAKING, EUSQUICIO GALANG, REV. ISABELO MONONGGIT, REV. EDWINO MERCADO, REV. DANIEL PONDEVIDA, REV. TEODORICO TARAN AND DR. BENJAMIN GALAPIA, PETITIONE...

G.R. NO. 128464. June 20, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Certiorari under Rule 45 of the Rules of Court to seek the reversal of the Court of Appeals' Decision[1] dated 10 October 1996 in favor of respondents [hereinafter referred to as the Batong group] and Resolution[2] dated 3 March 1997 denying the Motion for Reconsideration of the herein petitioners [hereinafter referred to as the Ao-As group].

The Court of Appeals found the facts to be as follows:

> The Lutheran Church in the Philippines (hereinafter referred to as the LCP) is a religious organization duly registered with the Securities and Exchange Commission on May 8, 1967. Its members are comprised of the Lutheran clergymen and the local Lutheran congregations in the Philippines which, at the time of its incorporation, was divided into three districts, namely: the North Luzon District (hereinafter referred to as the NLD); the South Luzon District (hereinafter referred to as the SLD); [and] the Mindanao district (hereinafter referred to as the MDD).
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> The governing body of the LCP is its national board of directors (hereinafter referred to as the LCP Board) which was originally composed of seven (7) members serving a term of two years. Six members of the LCP Board are elected separately in district conferences held in each district, with two members representing each district - the elected district president becomes the clergy representative to the LCP Board and the other is a lay representative to the LCP Board. The seventh member of the Board is the National President of the LCP who is elected at large in a national convention held in October of every even-numbered year.
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> During the 1976 LCP national convention, a resolution was passed dividing the North Luzon district (NLD) into two districts: the NLD Highland District (NLHD) and the NLD Lowland District (NLLD) -- thereby increasing the number of directors from seven (7) to nine (9). Again in the 1984 LCP national convention, a resolution was passed creating another district, namely, the Visayan Islands District (VID) thereby increasing further the number of directors to eleven (11). Both resolutions were passed pursuant to Section 2 of Article 7 of the LCP By-Laws which provides that: "LCP in convention may form additional districts as it sees fit".
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> Since the addition of two or more districts, an eleven (11) member board of directors representing the five (5) districts managed the LCP without any challenge from the membership until several years later when certain controversies arose involving the resolutions of the Board terminating the services of the LCP business manager and corporate treasurer since 1979, Mr. Eclesio Hipe.
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> The termination of Mr. Hipe sparked a series of intracorporate complaints lodged before the Securities and Exchange Commission (SEC). For the first time, the legality of the eleven (11) member Board was put in issue

> as being in excess of the number of directors provided in the Articles of Incorporation since no amendments were made thereto to reflect the increase.
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> Aside from the present case, SEC-SICD Case no. 3556 entitled "Excelsio Hipe, et. al. vs. Thomas Batong, et. al." and SEC-SICD Case No. 3524, "Domingo Shambu, et. al. vs. Thomas Batong, et. al." respectively, sought to declare null and void Board Resolution Nos. LCP-BD-6-89 and LCP-BD-7-89; and SEC-SICD Case No. 3550 entitled "The Lutheran Church in the Philippines vs. Exclesio Hipe" which sought to recover the corporate records still in the possession of Mr. Hipe.
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> [The members of the Batong group] are the duly elected board of directors of the LCP at the time of the filing of SEC-SICD Case No. 3857. On the other hand, [the Ao-As group] have served in various capacities as directors or officers of the LCP.
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> On August 17, 1990, [the Ao-As group] filed SEC-SICD Case No. 3857 for accounting and damages with prayer for preliminary injunction and appointment of a management committee asserting the following causes of action:"First, the alleged non-liquidation and/or non-accounting of a part of the proceeds of the La Trinidad land transaction in the amount of P64,000.00 by petitioner Thomas Batong;
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> Second, the alleged non-liquidation and/or unaccounting of cash advances in the aggregate amount of P323,750.00 by petitioner Thomas Batong;
>
> Third, the alleged dissipation and/or unaccounting of the LCP general fund in the amount of 4.8 million;
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> Fourth, the non-registration of the Leyte land purchased with LCP funds by petitioner Victorio Saquilayan;
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> Fifth, severance of church-partnership relationship with Lutheran Church-Missouri Synod (LCMS); and
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> Sixth, the transfer of LCP corporate books from the Sta. Mesa office to the Caloocan office."

During the hearings on the application for creation of a management committee, [the Batong group] filed an Urgent Motion to Suspend the Proceedings of the Case in view of an amicable settlement agreed upon by the parties entitled "A FORMULA FOR CONCORD". However, notwithstanding the FORMULA FOR CONCORD, the SEC-SICD denied [the Batong group's] motion to suspend proceedings.

On January 23, 1992, petitioners filed a Motion to Dismiss alleging again the FORMULA OF CONCORD. Again, the SEC-SICD denied [the Batong group's] motion.

Subsequently, on September 3, 1992, the SEC-SICD Hearing Officer after the presentation of the parties respective evidence, issued an Order creating a management committee. Said Order reads, in part:

> " x x x All board resolutions and/or management actions or decisions passed and approved by them are deemed null and void ab initio for they were passed, and approved by an illegally constituted Board of Directors. . . And worse, several resolutions or Board's actions are not only (deemed) null and void but have caused irreparable damage to the corporation such as the termination of all LCP staff and employee (LCP-BD-29-90); dissolution of LCP Business Office (LCP-BD-37-90); termination of the partner-church relationship between the LCP and the Lutheran Church Missouri Synod which is the major benefactor and source of funds of LCP (LCP-BD-28-90); forcible taking of almost all official records and equipment of LCP by respondent Thomas B. Batong and transferring the (same) from the LCP business office; acquisition of some lands using the corporate funds were in the name of some person other than the LCP; and various cash advances of corporate funds by the respondents are not liquidated up to the present.
>
> WHEREFORE, premises considered, A MANAGEMENT COMMITTEE is hereby created to undertake the management of the Lutheran Church in the Philippines until such time that new members of the LCP Board of Directors shall have been elected and qualified in the election to be called and conducted by the Management

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> Committee in accordance with the LCP's Articles of Incorporation and By-Laws preferably in October 1992."

On September 14, 1992, [the Batong group] filed their Motion for Reconsideration which was subsequently denied in an Order dated September 23, 1992.

On September 23, 1992, [the Batong group] filed with the SEC En Banc a Petition for Certiorari with prayer for a temporary restraining order alleging that the SEC-SIDC acted with grave abuse of discretion in creating the management committee.

Shortly thereafter, on September 29, 1992, the following were appointed to the management committee: Atty. Puno as Chairman; and private respondents Jose Laking, Eduardo Ladlad, Romeo Celiz as members. However, Atty. Puno later resigned and was replaced by Atty. Oscar Almazan who was appointed as Chairman. After the death of Romeo Celiz, he was replaced by private respondent Luis Ao-As.

On October 6, 1992, [the Ao-As group] filed a motion for issuance of a writ of preliminary injunction seeking to enjoin [the Batong group] not only from continuing to act as LCP board of directors but also from calling a national convention to elect new set of officers and members of the Board as provided in the LCP Constitution and By-Laws.

On October 16, 1992, the SEC-SIDC ordered the issuance of a writ of preliminary injunction prohibiting [the Batong group] from "acting as a board of directors or officers of Lutheran Church in the Philippines, Inc. (LCP) and from holding any convention or general or special membership meeting as well as election of the members of the LCP board of directors, until further orders".

The [the Batong group] allege that the SEC-SIDC management committee used the Order dated October 16, 1992 to carry out ultra vires acts, more specifically: (i) to take control of and closing down church buildings; (ii) to evict LCP clergymen from their church parsonages; (iii) to ordain and appoint new clergymen to replace incumbent members of the church hierarchy. In at least one case which has reached this Court, CA-G.R. No. 34504, it was found that:

> "On August 13, 1993, [members of the Ao-As group] Oscar Almazan, James Cerdenola, Edgar Balunsat and Edwino Mercado, together with armed security guards, acting in behalf of LCP, forcibly took possession of the houses occupied by [the Batong group]. In view of the latter's refusal to leave the premises, they permanently padlocked the main gate of the compound confining [the Batong group] and their families therein and prevented the ingress and egress thereto. Later the [Batong group] left their houses due to the alleged intimidation and threats employed by the [Ao-As group]. Thereafter, the latter entered the dwelling and took possession of the same."

However, even before the creation of the management committee, the LCP national convention had already been called in a Board meeting held on September 26, 1991 at the Lutheran Hospice, Quezon City. Hence, by the time the writ of preliminary injunction was issued, all notices had already been received by all local congregations and convention delegates had likewise already been chosen to attend the national convention.

Thus, the 17[th] LCP National Convention was held on October 26 to 30, 1992 as earlier scheduled at the Immanuel Lutheran Church and School, Tugatong, Malabon, Metro-Manila. The list of official delegates to the Convention is shown in pages 32 to 33 of the Convention Records.

During the 17[th] LCP National Convention, the delegates representing the majority of the members which comprised the three districts (North Luzon, South Luzon and Mindanao) issued a "Manifesto" to initiate by themselves the election for a new set of church leaders because the incumbent directors were enjoined to act as a board. In the election, the following were elected as LCP officers, namely:

President -- Rev. Victorino Saquilayan

Vice-President -- Rev. Juanito Basalong

Secretary -- Rev. Charlito Mercado

Treasurer -- Rev. Benjamin Lasegan

Similarly, prior to the issuance of the writ of preliminary injunction and the appointment of the management committee, the SLD (South Luzon District) of LCP already held its district conference on august 26 to 28, 1992 which elected, among other of its officers, the SLD Lay Representative pursuant to the LCP Constitution and By Laws. The following were elected:

SLD President and
Clergy Representative : Rev. Elmer Banes

SLD Lay Representative: Roman Moscoso

The district conference for NLD was likewise held before the issuance of the writ of preliminary injunction on October 7 to 9, 1992. In said convention, the local congregations and clergymen executed a manifesto expressing their own opposition to the appointment of a management committee.

[The Batong group] then filed with the SEC En Banc a Supplemental Petition dated November 13, 1992 alleging the supervening events in the case which took place after the filing of the original petition on September 23, 1992.

Subsequent to the 17[th] LCP national convention of October 1992, a special convention was called by the SEC Management Committee on January 25 to 29, 1993 at Cagayan de Oro City to elect a different set of officers for LCP. [The Batong group] allege that the required notices were not sent to several local congregations and even fewer LCP members were permitted by [the Ao-As group] to attend the special convention as evidenced by the list of official delegates contained in the minutes of the special convention.

On July 21, 1993, [the Batong Group] filed a Second Supplement to its petition for certiorari in the SEC En Banc alleging the supervening events and seeking the review of an Order of the Hearing Officer dated June 9, 1993 which enlisted the aid of the Secretary of the Department of Interior and Local Government and the PNP Director General to enforce the writ of preliminary injunction.

Pending the resolution of the above-mentioned petitions, the management committee took control of several church properties, replaced clergymen from their parsonages and froze all bank accounts in the name of LCP.

[The Batong group] then filed a Petition for Mandamus and Damages with Prayer for Preliminary Mandatory Injunction on August 19, 1993 seeking to unfreeze the bank accounts and recover the seized buildings.

All of the aforementioned petitioners (sic) were denied by the SEC En Banc. A motion for reconsideration was filed but the same was likewise denied.[3]

The Batong group then filed a Petition for Review with the Court of Appeals seeking to annul the Decision of the Securities and Exchange Commission En Banc. In said Petition, the Batong group alleged that the Ao-As group persisted in carrying out ultra vires and illegal acts, to wit:

> (a) Private respondent Luis L. Ao-As, purportedly on the strength of a board action held at Baguio on February 22-24, 1994 and of the assailed Order dated October 16, 1992, closed the premises of the Gloria Dei School after school year 1993-1994 in an attempt to take-over the management and operations of the said school. The closure of the Gloria Dei School is the subject of SEC Case No. 05-93-4463.

> (b) On February 1, 1994, Rev. Eduardo Ladlad, acting as President of the LCP, executed a Contract to Sell with Solid Gold Realty Corporation whereby he agreed to sell a portion of LCP's property in Cavite with an area of 7,218 square meters at a price of P1,000 per square meter or a total of P7,218,000 with a down payment of P1,000,000.
>
> (c) Upon application of the [Ao-As group], the SEC-SIDC issued an Order dated June 1, 1994 ex parte and on June 14, 1994 at around 7 p.m., a certain Rev. Laking, using the Order of the SEC-SIDC dated June 1, 1994 and October 16, 1992 writ of preliminary injunction, entered the premises of the Abatan Hospital located in Baguias, Benguet Province, took over the management and control of the Abatan Hospital and forced the pastor previously assigned therein - Pastor Laapniten - to leave his post simply because Pastor Lapniten is identified with the Saquilayan Group.[4]

On 30 June 1994, the Batong group filed with the Court of Appeals a motion for the issuance of a Temporary Restraining Order and/or Preliminary Injunction. On 12 July 1994, the Court of Appeals issued a Temporary Restraining Order to enjoin the Ao-As group "from implementing the contract to sell between the Lutheran church in the Philippines (LCP) and Solid Gold Realty Corporation and from selling, transferring, assigning and/or disposing of any other property of the LCP; to enjoin the Ao-As group and/or those officers elected in their convention from enforcing or implementing the Order dated October 16, 1992 and the writ of preliminary injunction issued in SEC Case 3857."

On 22 September 1994, the Batong group filed a Motion/ Manifestation to cite Eduardo Ladlad, Harry Roa, James Cerdenola and Luis Ao-As in contempt of court, alleging that the latter, on 15 September 1994, entered the Olongapo Lutheran Church with six armed men and there and then padlocked the main gate of the church. Consequently, Rev. Elmer Bañes, the assigned overseer at said church, was barred from entering the premises on 17 September 1994.

On 10 October 1996, the Court of Appeals ruled in favor of the Batong group, disposing the petition as follows:

> WHEREFORE, the petition is hereby granted. The Decision dated August 25, 1993 of the SEC En Banc is hereby RECONSIDERED and SET-ASIDE and the Orders of the SEC-SIDC dated September 3, 1992 and October 16, 1992 are hereby ANNULLED and SET ASIDE. The SEC is hereby directed to conduct a new election of the directors of the LCP consistent with the provisions of the Corporation Code.[5]

Hence, this petition, where the Ao-As group brings forth the following issues to be resolved by this Court:

> I.
>
> Whether or not the Court of Appeals gravely erred in utterly ignoring and disregarding all the evidence adduced by [the Ao-As group], and in making findings of facts contradicted by the evidence on record and not supported by any evidence whatsoever.
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> II.
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> Whether or not the Court of Appeals reversibly erred in ruling that SEC-SICD Case No. 3857 is a case of forum shopping.
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> III.
>
> Whether or not the Court of Appeals committed reversible error in declaring as invalid the manner of elections of the Board of Directors of the Lutheran Church in the Philippines as provided for in its By-Laws.
>
> IV.
>
> Whether or not the Court of Appeals committed reversible error in ruling that the SEC-SICD had no

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> jurisdiction to call for a special election of the Board of Directors of the Lutheran Church in the Philippines.[6]

In addition to the prayer to reverse the 10 October 1996 Decision and 3 March 1997 Resolution of the Court of Appeals, and the revival of Resolution of the SEC En Banc in SEC-EB Case No. 330 and the Order of the SEC-SIDC in Case No. 3857, the Ao-As group prays for the following:

> - x x x x
>
> - Declaring the Board of Directors elected at the National Convention called by the Management Committee on January 25-27, 1993 in Cagayan de Oro as the legitimate members of the Board of LCP;
>
> - Declaring all acts and resolutions passed by the Batong group invalid and of no legal effect; and
>
> - Ordering the Batong group to return all the properties seized from the LCP and to refrain from the representing the LCP.[7]

The Ao-As group did not commit
willful and deliberate forum shopping
in the filing of SEC-SIDC
Case No. 3857.

Since a ruling upholding the Court of Appeals on the issue of forum shopping would render all the other issues in this petition moot, we resolve to pass upon the same at the onset.

The Ao-As group claims that the Court of Appeals reversibly erred in ruling that SEC-SICD Case No. 3857 is a case of forum shopping. The Court of Appeals had ruled:

> Finally, SEC-SICD Case No. 3857 is a clear case of forum shopping. The acts of [the Batong group], as embodied in several board resolutions, have already been raised and passed upon in other cases pending at the time the [Ao-As group] instituted the present controversy.
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> The board resolutions denominated as LCP-BD-29-90 and LCP-BD-37-90 - authorizing the dissolution of the LCP business office and termination of the employees connected therewith - was the subject of NLRC CASE NOS. 03-01935-90 and 04-01979-90 pending before the National Labor Relations Commission.
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> The board resolution denominated as LCP-BD-28-90 authorizing the transfer of the LCP corporate records from the Sta. Mesa Office to the Caloocan Office - was the subject of Civil Case No. 133394-CV and 131879-CV pending before the Metropolitan Trial Court of Manila, Branches 20 and 21 and subsequently dismissed in view of the FORMULA OF CONCORD entered into between the parties.
>
> On the other hand, the legality of the composition of the eleven-member LCP Board was already the subject matter of SICD Case No. 3524 which was appealed to the SEC En Banc and docketed as SEC Case No. 352.
>
> SEC Case No. 3857 is not the first case where the [Ao-As group], or those with similar interests, have asked for the appointment of a management committee. In SEC Case 3556 entitled "Exclesio Hipe and Lutheran Church of the Philippines v. Thomas Batong, et al.", in a motion dated June 18, 1991, private respondent Exclesio Hipe prayed for the appointment of a management committee for LCP. In an Order dated August 15, 1991, the SEC-SICD ruled that the Motion for the Appointment of a Management Committee and Accounting filed by the petitioners cannot be given due course considering that the same is one of the incidents in SEC Case No. 3857 entitled Rev. Luis Ao-As, et al. vs. Thomas Batong now pending in the sala of Hon. Elpidio Salgado". Petitioners knew that similar petitions have been previously commenced because Atty. Oscar Almazan who is also a co-counsel in the case was the counsel of record in SEC Case No. 3556 and the other cases.
>
> Clearly, the act of the [Ao-as group] in filing multiple petitions involving the same issues constitutes forum

> shopping and should be sanctioned with dismissal. x x x[8]

SEC-SICD Case No. 3857 is a petition for accounting with prayer for the appointment of a management committee and the issuance of a writ of injunction. The Ao-As group claims that the issue involved in the case is whether the Ao-As group is entitled to an accounting and to the creation of a management committee due to the Batong group's alleged dissipation and waste of the assets of the LCP, and the subject matter is the act of dissipation and waste committed by the Batong group. On the other hand:

- NLRC Cases No. 03-01935-90 and 04-01979-90 pending before the National Labor Relations Commission, is a case for illegal termination, which allegedly "obviously involves a different cause of action";

- The cases pending before Branches 20 and 21 of the Municipal Trial Court of Manila, docketed as Civil Cases No. 133394-CV and 131879-CV, respectively, are actions for forcible entry and unlawful detainer; and

- SEC-SICD Case No. 3556 puts in issue the validity of LCP Board resolutions LCP-BD-6-89 and LCP-BD-7-89, where what are involved are the incidents resulting from the issuance of the resolutions - the unjust termination of Mr. Exclesio Hipe as LCP Business Manager and treasurer and the illegal appointment of one Hildelberto Espejo in his place. SEC-SIDC Case No. 3524 puts in issue the legality of the composition of the eleven-member LCP Board. These are allegedly different issues from that of SEC-SIDC Case No. 3857 where the acts of respondents are claimed to the basis of a prayer for accounting and appointment of a management committee.

As elucidated above, the causes of action under SEC-SIDC Case No. 3857 are the following:

> First, the alleged non-liquidation and/or non-accounting of a part of the proceeds of the La Trinidad land transaction in the amount of P64,000.00 by petitioner Thomas Batong;
>
> Second, the alleged non-liquidation and/or unaccounting of cash advances in the aggregate amount of P323,750.00 by petitioner Thomas Batong;
>
> Third, the alleged dissipation and/or unaccounting of the LCP general fund in the amount of 4.8 million;
>
> Fourth, the non-registration of the Leyte land purchased with LCP funds by petitioner Victorio Saquilayan;
>
> Fifth, severance of church-partnership relationship with Lutheran Church-Missouri Synod (LCMS); and
>
> Sixth, the transfer of LCP corporate books from the Sta. Mesa office to the Caloocan office.

The elements of forum shopping are: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and the relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.[9]

Otherwise stated, there is forum shopping where a litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending. The defense of litis pendentia in one case is a bar to the other/others; and, a final judgment is one that would constitute res judicata and thus would cause the dismissal of the rest. Absolute identity of the parties is not required. It is enough that there is substantial identity of the parties. It is enough that the party against whom the estoppel is set up is actually a party to the former case. There is identity of causes of action if the same evidence will sustain the second action. The principle applies even if the relief sought in the two cases may be different. Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.[10]

As the present jurisprudence now stands, forum shopping can be committed in three ways: (1) filing multiple

cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (litis pendentia); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (res judicata); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either litis pendentia or res judicata[11]). If the forum shopping is not considered willful and deliberate, the subsequent cases shall be dismissed without prejudice on one of the two grounds mentioned above. However, if the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice.[12]

The six grounds originally relied upon by the Ao-As group in SEC-SICD Case No. 3857 are entirely different from the causes of action in NLRC Cases No. 03-01935-90 and 04-01979-90, Civil Cases No. 133394-CV and 131879-CV, and SEC-SICD Cases No. 3556 and 3524. It is true that the causes of action in the latter cases were included as additional grounds in SEC-SICD Case No. 3857 for the appointment of the management committee and for accounting "of all funds, properties and assets of LCP which may have come into their possession during their incumbency as officers and/or directors of LCP."[13] However, the creation of a management committee and the prayer for accounting could not have been asked for in the labor (NLRC Cases No. 03-01935-90 and 04-01979-90) and forcible entry (Civil Cases No. 133394-CV and 131879-CV) cases.

As regards the other SEC Cases, though, the Ao-As group could have indeed prayed for the creation of the management committee and the accounting of the funds of the LCP. In fact, as stated by the Court of Appeals, the petitioner in SEC-SICD Case No. 3556 had prayed for the appointment of a management committee in a motion dated 18 June 1991. This motion, however, was subsequent to the filing of SEC-SICD Case No. 3857 on 17 August 1990, for which reason the SEC-SICD ruled that such motion cannot be given due course considering that it was one of the incidents of SEC-SIDC Case No. 3857. In effect, the SEC-SIDC had denied the subsequent motion on the ground of litis pendentia. But should SEC-SICD Case No. 3857, which contains the earlier prayer to create a management committee, be likewise dismissed? Following the rules set forth in the preceding paragraphs, it would depend on whether the different SEC cases constitute willful and deliberate forum shopping on the part of Ao-As group.

We hold that this is not a case of willful and deliberate forum shopping and, hence, the SEC-SICD Case No. 3857, which contains the earlier prayer to create a management committee, should not be dismissed. The reason for this is the strict evidentiary requirement needed to grant a prayer to create a management committee. The power of the SEC[14] to create a management committee is found in Section 6(d) of Presidential Decree No. 902-A, as amended, which provides:

> Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
>
> d) To create and appoint a management committee, board or body upon petition or motu propio to undertake the management of corporations, partnerships or other associations not supervised or regulated by other government agencies in appropriate cases when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralization of business operations of such corporations or entities which may be prejudicial to the interest of the minority stockholders, parties-litigants or the general public.

Evidently, it should be difficult to deduce the "imminent danger of dissipation, loss, wastage or destruction of assets or other properties" from an allegation of a single act of previous misappropriation or dissipation on the part of the Batong group. It is often only when the previous misappropriations and dissipations have become extensive and out of control that it can be candidly said that there is an imminent danger of further dissipation. The Ao-As group cannot be faulted therefore for not praying for the creation of a management committee in the first couple of cases it filed with the SEC, and neither can they be faulted for using the causes of action in previously filed cases to prove their allegation of imminent dissipation. We cannot rule out the possibility that the

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danger of imminent dissipation of the corporate assets became apparent only in the acts of the respondents subsequent to the filing of the first two SEC cases.

The creation of a management committee is not warranted by the facts of the case.

The Ao-As group claims that the Court of Appeals "unceremoniously disregarded all the undisputed testimonial and documentary evidence presented before the SEC,"[15] and strongly pointed to their evidence which "clearly show the dissipation, wastage and loss of LCP funds and assets."[16] These pieces of evidence supposedly proved the following:

- The alleged anomaly concerning the sale of the land and the purchase of another land, both located in La Trinidad. The La Trinidad Land Transaction, the proceeds whereof were allegedly unliquidated, was testified to by petitioner Ao-As and Mr. Excelsio Hipe before the SEC-SICD in a hearing conducted on 11 September 1990.

- Unliquidated cash advances and unaccounted funds. Petitioners presented evidence to prove the failure of respondent Batong to liquidate cash advances and account for P4,000,000 of LCP funds.

- Purchase of Leyte Land in the name of respondent Saquilayan with LCP funds. Respondent LCP Vice-President Victorio Y. Saquilayan allegedly purchased a parcel of land in Albuera, Leyte in his name, using LCP funds. Respondent Saquilayan subsequently donated to the LCP, and explained that the purchase in his name was upon advice of LCP's lawyers to comply with the rulings in Republic of the Philippines v. Hon. Arsenio M. Gonong[17] and Republic of the Philippines v. Iglesia Ni Cristo.[18]

- Severance of partner-church relationship between the LCP and the LCMS. Respondents issued LCP Board Resolution No. LCP-BD-28-90 severing all relations with the Lutheran Church-Missouri Synod (LCMS), allegedly in violation of LCP Board Resolution No. LCP-BD-33-70 which stated that "all actions taken by LCP in convention can only be amended, modified and changed by LCP in convention."

- Taking of LCP Books of Account. Respondent Batong, accompanied by members of the LCP Board and about 15 armed security guards allegedly barged into the premises of the LCP in Old Sta. Mesa, Manila, and removed all of the official records and documents of the LCP (including the books of account, official receipts, check and journal vouchers, official papers and titles to property) and had the same relocated to his residence in Caloocan City and to the offices of Immanuel Lutheran Church in Malabon.

The Court of Appeals had ruled:

> Nothing in [Ao-As group's] evidence presented in support for their application for a management committee showed an impending or imminent danger of dissipation of funds. In the assailed SEC-SICD Order dated September 3, 1992, the appointment of a management committee was justified because of "acquisition of some lands using the corporate funds . . . in the name of some person other than the LCP, and various cash advances of corporate funds by the respondents not liquidated up to the present".
>
> The SEC-SICD Order refers to the La Trinidad and Leyte land transactions and the alleged non-liquidation or unaccountability of cash advances and other funds - which constitutes the four causes of action alleged in the petition.
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> [The Ao-As group] admit[s] that the La Trinidad Land transactions [were] consummated in 1984 while the Leyte transaction was made in 1989. Both occurred prior to the Commencement (sic) of the present petition in 1990. Similarly, the alleged unliquidated cash advances referred to accumulated funds long withdrawn in the past by Dr. Thomas Batong "(in varying amounts) for personal, travel and other miscellaneous purposes, all in

> the aggregate amount of not less than P 323,750.00". And the alleged unaccounted funds referred to the "trial balance of LCP as of September 15, 1989".
>
> Notably, the remaining two causes of action in the aforementioned petition do not involve dissipation of funds, namely: (i) the severance of partner-church relationship between LCP and Lutheran Church-Missouri Synod; and (ii) the transfer of corporate books from the Sta. Mesa Office to Caloocan City.
>
> All of the grounds relied upon by [the Ao-As group] pertain to past delinquencies for which there are other available remedies such as accounting and reconveyance. The [Ao-As group] did not allege, much less prove, any present or imminent loss or destruction of LCP properties and assets. At best, it expresses merely a general apprehension for possible mismanagement by respondent on the basis of the aforementioned past transactions.
>
> It must be stressed that the appointment of a management committee inevitably results in the drastic summary removal of all directors and officers of LCP. Clearly, the appointment of a management committee is not justified due to the failure of only two (2) of the LCP Board members to liquidate past cash advances and other transactions involving corporate property and funds.
> Where the corporation is solvent, a receiver will not be appointed because of past misconduct and a subsequent mere apprehension of a future misdoing, where the present situation and the prospects for the future are not such as to warrant a receivership. x x x"

Significantly, the SEC En Banc even pointed out that: "the question of whether or not the [Batong group] have to account for all funds, properties and assets of LCP which may come into their possession as directors and/or officers of LCP is still to be resolved by the hearing officer after trial on the merits."

Under prevailing law, the SEC-SICD should have refused the appointment of a management committee.

> "It is the general rule that a receiver (or a management committee) will not be appointed unless it appears that the appointment is necessary either to prevent fraud, or to save the property from fraud or threatened destruction, or at least in case of solvent corporation x x x. The burden of proof is a heavy one which requires a clear showing that an emergency exists.
>
> "x x x Similarly, a receiver (or a management committee) should not be appointed in an action by a minority stockholder against corporate officers for an accounting where the corporation is solvent and going concern and a receiver is not necessary to preserve the corporate property pending the accounting".

Furthermore, a management committee should not be created when there was an adequate remedy available to private respondents for the liquidation of unaccounted funds.[19]

The Court of Appeals went on to rule that the members of the Ao-As group "have not positively shown that the said funds are unaccounted for,"[20] and analyzed the evidence presented by the Ao-As group to illustrate that the unaccounted funds were only P1,572.43, "which may be attributable to adjustment errors but certainly not a case of misappropriation or misuse."[21]

The Ao-As group maintains that the unaccounted funds amount to around P4.8 million, and claim that if the Court of Appeals "had only given the [the Ao-As group] a chance to prove their allegations (concerning acts committed by respondents subsequent to the creation of the management committee), then it would have confirmed the earlier determination made by the SEC-SICD regarding the necessity for the creation of the management committee."[22] It further asseverates:

> - The acts constituting [the Ao-As group's] six causes of action in the petition filed with the SEC-SICD (the La Trinidad land transaction, the unliquidated cash advances, the unaccounted funds amounting to P4.8 million, the Leyte land transaction, the severance of the sister-church relationship and forcible removal of the LCP books of account) could not be characterized merely as "past delinquencies". The six causes of action and the

> subsequent acts of the [Batong group], after the filing of the petition with the SEC-SICD, clearly show a continuing and deliberate scheme of the dissipation and wastage of LCP properties and assets, which if unrestricted would cause further destruction of LCP assets and paralyzation of its operations, as it had already done. The creation of the Management Committee was, therefore, perfectly legal and justified. And the ruling of respondent Court of Appeals that these acts do not justify its appointment is, [the Ao-As group] humbly submit, reversible error.
>
> - In addition, the CA Decision also declared that "in any event, the past anomalies were only done by some of the Batong group." This is erroneous. Under the By-Laws of the LCP, the Board of Directors is in charge of the disbursement of funds. Sections 1 and 2 of Article 6 of the LCP By-Laws state:
> "Section 1. The President of the LCP shall be given the following executive powers and supervisory duties:
>
> xxx xxx xxx
>
> b. The President together with two other members of the LCP Board of Directors, may authorize the release of surplus funds in emergencies or in cases of sudden need.
>
> xxx xxx xxx
>
> Section 2. The Board of Directors of the LCP
>
> xxx xxx xxx
>
> c. The Board of Directors shall prepare the annual budget of the LCP.
>
> d. The Board of Directors shall be responsible for the annual auditing of all the LCP Properties and may initiate special auditing at any time."

- From the foregoing, it is clear that respondent Batong did not act alone, but in concert with the other members of the LCP Board. The creation of the management committee was therefore justified.

- The CA Decision also noted that since there were other remedies available to the petitioners to correct these anomalies, the creation of the management committee was unjustified. [The Ao-As group] again humbly submit again (sic) that respondent Court of Appeals erred when it made this statement. The LCP management committee was created precisely because of the extreme urgency that [mere] caused by the continued dissipation, loss and wastage of LCP funds and assets by the Batong group. If [the Ao-As group] were to avail of these so-called available remedies then by the time a decision is to be rendered in these "available remedies" the assets and funds of the LCP would have indubitably been lost forever since the dissipation, loss and wastage were then, and still is, an on going process. Consequently, it is clearly unreasonable for respondent Court of Appeals to declare that the [Ao-As group] should have first availed of these so-called remedies.[23]

Even without delving into the analysis of the prosecution evidence concerning the six causes of action and the alleged acts subsequent to these six causes of action, it is already appropriate for us to rule that the facts as they appear to us now do not warrant the creation of a management committee.

Refusal to allow stockholders (or members of a non-stock corporation) to examine books of the company is not a ground for appointing a receiver (or creating a management committee) since there are other adequate remedies, such as a writ of mandamus.[24] Misconduct of corporate directors or other officers is not a ground for the appointment of a receiver where there are one or more adequate legal action against the officers, where they are solvent, or other remedies.[25]

The appointment of a receiver for a going corporation is a last resort remedy, and should not be employed when another remedy is available. Relief by receivership is an extraordinary remedy and is never exercised if there is an

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adequate remedy at law or if the harm can be prevented by an injunction or a restraining order. Bad judgment by directors, or even unauthorized use and misapplication of the company's funds, will not justify the appointment of a receiver for the corporation if appropriate relief can otherwise be had.[26]

The fact that the President of the LCP needs the concurrence of only two other directors to authorize the release of surplus funds plainly contradicts the conclusion of conspiracy among the presently 11-man board. Neither does the fact that the Board of Directors of the LCP prepares the annual budget and the annual auditing of properties of the LCP justify the conclusion that the alleged acts of respondent Batong was done in concert with the other directors. There should have been evidence that such dissipation took place with the knowledge and express or implied consent of most or the entire board. Good faith is always presumed.[27] As it is the obligation of one who alleges bad faith to prove it, so should he prove that such bad faith was shared by all persons to whom he attributes the same. The last resort remedy of replacing the entire board, therefore, with a management committee, is uncalled for.

The Court of Appeals erred indeclaring as invalid the manner of elections of the Board of Directors of the LCP as provided in its By-Laws.

The Ao-As group stresses that the Court of Appeals committed reversible error in declaring as invalid the manner of elections of the Board of Directors of the Lutheran Church in the Philippines as provided in its By-Laws. The Court of Appeals ruled:

> The Court notes that the LCP By-Laws provide for a special procedure for the election of its directors. This was the procedure followed by both the [Batong group] and the [Ao-As group].
> "Section 2. Composition of the Board of Directors of LCP.
>
> - The Board of Directors shall be composed of the President of LCP and the President and lay representative of each District.
>
> - Newly elected members of the LCP Board of Directors shall assume their positions immediately after LCP conventions or the October LCP Board of Directors' meeting in the year in which they are elected."

However, Section 24 of the Corporation Code provides that "[a]t all elections of directors or trustees, there must be present, either in person or by representative to act by written proxy, x x x if there be no capital stock, a majority of the members entitled to vote."

It is clear from Section 24 that in the election of the trustees of a non-stock corporation, it is necessary that at least "a majority of the members entitled to vote" must be present at the meeting held for the purpose. It follows that trustees cannot be elected by zones or regions, each zone or region electing independently and separately a member of the board of trustees of the corporation, such method being violative of Section 24. (SEC Opinions, Jan. 30, 1969, April 1, 1981). The election of the directors by district or regions as provided in the LCP By-Laws where a majority of the members are not present is inconsistent with the Corporation [Code] and must be struck down as invalid. Consequently, the directors elected by district cannot be considered as bona fide directors. Even the election of LCP officers in the SEC-SICD sponsored national convention of the LCP must be considered as invalid.[28]

As argued by the Ao-As group, however, the validity of the LCP By-Laws providing for a special procedure in the election of the LCP Board of Directors was never put in issue, either by the Ao-As group or the Batong group. The Court of Appeals, therefore, should have refrained from passing upon such issue, motu propio. According to Rule 51, Section 8 of the Rules of Court, which pertains to matters which may be decided on appeal:

> Sec. 8. Questions that may be decided. - No error which does not affect the jurisdiction over the subject matter

> or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

The ruling of the SEC En Banc setting aside the SEC-SICD determination that LCP Board of Directors was illegally constituted has therefore become final and executory, subject to the determination by the SEC-SICD of the seven members that should comprise the Board, as likewise provided in said Decision.[29]

Even the Batong group agrees with the Ao-As group on the validity of the by-laws provision concerning the election of the directors by districts:

> [The Batong group] respectfully submit[s] that the matter of how the directors or other leaders of a church shall be chosen is a matter of ecclesiastical law or custom which is outside the jurisdiction of civil courts. Hence, even assuming arguendo, that the mode of election of the LCP is not strictly in accordance with the Corporation Code, it was improper for the Securities and Exchange Commission to apply the provisions of the said Code to the LCP.[30]

In any case, the stipulation in the By-Laws is not contrary to the Corporation Code. Section 89 of the Corporation Code pertaining to non-stock corporations provides that "(t)he right of the members of any class or classes (of a non-stock corporation) to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws."[31] This is an exception to Section 6 of the same code where it is provided that "no share may be deprived of voting rights except those classified and issued as 'preferred' or 'redeemable' shares, unless otherwise provided in this Code."[32] The stipulation in the By-Laws providing for the election of the Board of Directors by districts is a form of limitation on the voting rights of the members of a non-stock corporation as recognized under the aforesaid Section 89. Section 24, which requires the presence of a majority of the members entitled to vote in the election of the board of directors, applies only when the directors are elected by the members at large, such as is always the case in stock corporations by virtue of Section 6.

WHEREFORE, the Decision of the Court of Appeals annulling and setting aside the order to create a management committee is thereby AFFIRMED, with the MODIFICATION that every subsequent election of the directors of Lutheran Church in the Philippines shall henceforth be in accordance with the By-Laws and Articles of Incorporation of the same. Costs against petitioners.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, SR., concur.

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[1] CA-G.R. SP No. 32800, penned by Associate Justice Corona Ibay-Somera, with Associate Justices Jorge S. Imperial and Celia Lipana-Reyes, concurring; rollo, pp. 58-112.

[2] Rollo, pp. 114-115.

[3] Rollo, pp. 59-69.

[4] Id. at 70.

[5] Id. at 111.

[6] Id. at 662-663.

[7] Id. at 52.

[8] Rollo, pp. 109-111.

[9] Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank, 427 SCRA 585, 590 (2004), Macrina S. Saura v. Ramon G. Saura, Jr., 372 Phil. 337, 349 (1999).

[10] Korea Exchange Bank v. Hon. Rogelio C. Gonzales, G.R. No. 142286-87, 15 April 2005, 456 SCRA 224, 243.

[11] RULES OF COURT, Rule 2, Section 4.

[12] See Administrative Circular No. 04-94, now incorporated in the Rules of Court under Rule 7 Section 5.

[13] Petition in SEC-SIDC Case No. 3857, rollo, p. 127.

[14] The reader should take note that SEC powers under P.D. No. 902-A have now been transferred by Section 5.2 of Republic Act No. 8799 from the SEC to the Regional Trial Courts. SEC-SIDC Case No. 3857 was filed in and decided by the SEC-SIDC way before the effectivity of R.A. No. 8799.

[15] Rollo, p. 665.

[16] Id. at 666.

[17] This case provides that a corporation sole is disqualified to acquire or hold alienable lands of the public domain because a corporation sole has no nationality, 204 Phil. 364, 370 (1982).

[18] This case provides that a corporation sole cannot apply for registration a parcel of land which its predecessors-in-interest had not registered under the Land Registration Act as such land never ceased to be part of the public domain, 213 Phil. 39, 45 (1984).

[19] Rollo, pp. 73-77.

[20] Id. at 79.

[21] Id. at 84.

[22] Id. at 681-682.

[23] Id. at 682-683.

[24] 16 Fletcher Cyc Corp. [Permanent Ed.] § 7729, p. 168.

[25] Id.

[26] Id. at 165-170.

[27] See CIVIL CODE, Article 527.

[28] Rollo, pp. 107-109.

[29] Id. at 107.

[30] Id. at 360-361.

[31] Corporation Code, Section 89-Right to vote, which is under "Title XI - NON-STOCK CORPORATIONS" PROVIDES: "The right of the members of any class or classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, broadened or denied, each member, regardless of class, shall be entitled to one vote.

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[32] Corporation Code, Section 6-Classification of shares, PROVIDES: "The shares of stock in corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: Provided, That no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares, unless otherwise provided in this Code; Provided, further, That there shall always be a class or series of shares which have complete voting rights. Any or all of the shares or series of shares may have a par value or have no par value as may be provided for in the articles of incorporation; Provided, however, That banks, trust companies, insurance companies, public utilities, and building and loan associations shall not be permitted to issue no-par value shares of stock.

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